THE HON'BLE SRI JUSTICE V. ESWARAIAH

W.P.No. 26312 of 2006

Dated:17-04-2007

Between:-

Smt. K. Razia Begum

..Petitioner

And

A.P. State Finance Corporation,
Hyderabad branch rep., by its Dy. Manager (Law),
Having its office at Chirag Ali Lane, Hyderabad
and two others.

..Respondents.

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:O R D E R:

It is the case of the petitioner that she is the owner of house bearing No. 16-57, ad-measuring 300 square yards situated at Plot No.1, Sai Krishna Nagar, Dilsuknagar, Hyderabad having purchased the same under a registered sale deed dated 14-02-2002. The said property was given in security for availing the loan by the third respondent, but the third respondent failed to pay the said loan amount. It is stated that without proceeding against the third respondent, who is the principal borrower, for realization of the amount due by auctioning the properties of the third respondent, the action of the respondent Nos. 1 and 2 in proceeding against the

property of the petitioner given in security is illegal and arbitrary.

The first respondent-Corporation granted term loan of Rs.34,00,000-00 on 19-08-2002 in favour of the third respondent for construction of residential flats on development basis at 16-11-1/5/263, Saleem Nagar Colony, Malakpet, Hyderabad against the security of Assignment of Developers Rights, Hypothecation of Plant & Machinery and furnishing of collateral security to the extent of 125% of the term loan sanctioned. After completing the legal formalities by the third respondent, the term loan was sanctioned. It is stated that as the principal debtor and surety holder failed to pay the loan, action has been initiated under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act') and the notices have been issued to them to clear all the dues; and that as on 31-01-2007, the amount due is Rs.14,56,625-00 towards principal; Rs.6,86,612-00 towards interest up to 31-01-2007; Rs.4,239-00 towards other expenses, totaling to Rs.21,47,476-00, payable by the principal borrower as well as the surety. Therefore, the property of the petitioner was notified for auction. It is stated that after the notification, the principal debtor requested to waive 50% of the interest and further requested to extend the scheme of 'one time settlement' for payment of the amount due, but the said representation is pending

consideration. However, it is open for the principal debtor and surety to settle the due amount either by way of 'one time settlement' or by way of seeking waiver of interest and pay the amount.

In the facts and circumstances of the case, I am of the opinion that the petitioner is not entitled to seek a writ of mandamus for a direction to the respondent Nos. 1 and 2 to first proceed against the property of the third respondent and then only to proceed against the property of the petitioner. Under Section 29 of the Act, it is open for the respondents to proceed against the properties of the principal debtor as well as surety. I therefore do not see any merit in the writ petition. The writ petition is accordingly dismissed. No costs.

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V. ESWARAIAH, J

Dated: 17-04-2007.
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